

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
DAVID M. GLOVER, JUDGE

DIVISION I

CACR06-981

April 25, 2007

BRANDON SHAW

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
FIFTH DIVISION [CR2003-2002,
CR2004-831]

HONORABLE WILLARD PROCTOR,
JR., JUDGE

AFFIRMED

On July 28, 2003, in case number CR 03-2002, Brandon Shaw pleaded guilty to Class B felony residential burglary and Class C felony theft of property. He was given five years' probation for each offense and was fined \$500. On July 26, 2004, the State filed a petition to revoke Shaw's probation on the bases that Shaw had committed a new offense (CR 04-831); had failed to pay his supervision fees of \$35 per month, his \$500 fine, and his court costs; had failed to complete fifty hours of community service within one year; and had failed to comply with Act 548.

On June 2, 2004, in case number CR 04-831, Shaw pleaded guilty to Class B felony theft by receiving and Class D felony fleeing. He was given five years' probation for each offense, was ordered to serve 120 days in jail, and was fined \$300. On July 30,

2004, the State filed a petition to revoke Shaw's probation on the bases that Shaw had failed to pay his supervision fees; had failed to complete sixty hours of community service within one year; had failed to comply with Act 548; and had failed to complete his GED.

On May 11, 2006, the trial court heard both revocation petitions in one hearing. After the hearing, the trial court revoked Shaw's probation in both cases and sentenced him to ten years for each offense, with the sentences to run concurrently. Shaw now appeals, arguing that the trial court erred in granting the State's revocation petitions because the State had failed to prove that he had inexcusably failed to comply with the conditions of his probation in each case. We affirm.

At the combined revocation hearing, Kenny Haskins, Shaw's probation officer, testified that Shaw had been advised of the conditions of his probation and that Shaw had never indicated that he did not understand the conditions. Haskins said that Shaw had not complied with the terms of his probation because he had failed to pay fees, he had not completed his community service, he had not completed his GED, he had not complied with Act 548, he had missed some Cycle Breakers meetings, and he had tested positive for marijuana. On cross-examination, Haskins admitted that completion of the GED program was not a formal condition of Shaw's probation and also that there was no deadline as to when Shaw was required to report to the Department of Correction for his one-day prison visit under Act 548. Regarding the missed Cycle Breakers meetings, he testified that Shaw missed two, one while he was in jail and another in April. Haskins further testified that Shaw had been advised that he was not to violate any laws.

The State rested after Haskins's testimony, and Shaw called no witnesses. Shaw argued that completing his GED was not a probation requirement, that there was no time table for complying with Act 548, and that his failure to pay his fines and costs was because he was indigent, not because he willfully refused to pay. The prosecutor argued several points, including that Shaw had failed to report, had failed to attend required meetings, and had tested positive for marijuana. Shaw then argued that drugs screens were not circled as a specific condition of his probation, to which the prosecutor countered that one of the conditions of probation was not to violate any laws and that there was certainly circumstantial evidence that Shaw had been in possession of a controlled substance. The trial court then revoked Shaw's probation in both cases.

A trial court may revoke a defendant's probation at any time prior to the expiration of the period of probation if it finds by a preponderance of the evidence that the defendant has inexcusably failed to comply with a condition of his probation. Ark. Code Ann. § 5-4-309(d) (Repl. 2006). In probation-revocation proceedings, the State has the burden of proving by a preponderance of the evidence that a defendant violated the terms of his probation, and this court will not reverse the trial court's decision to revoke probation unless it is clearly against the preponderance of the evidence. *Stinnett v. State*, 63 Ark. App. 72, 973 S.W.2d 826 (1998). The State need only show that the appellant committed one violation in order to sustain a revocation. See *Brock v. State*, 70 Ark. App. 107, 14 S.W.3d 908 (2000).

On appeal, Shaw argues that at the conclusion of the revocation hearing, the State narrowed the bases for seeking revocation to three reasons: (1) failure to attend Cycle Breakers meetings; (2) failure to pass a drug screen; (3) failure to meet with his probation officer. Shaw contends that there was no deadline for completing the Cycle Breakers program; that he was not required by the conditions of his probation to pass drug screens; and that there was no evidence presented at the revocation hearing about how often he was to report to his probation officer.

With respect to the failure to pass a drug screen, Shaw, citing *Neely v. State*, 7 Ark. App. 238, 647 S.W.2d 473 (1983), argues that his probation cannot be revoked on the basis of an alleged violation of some unspecified condition. However, one of the conditions of Shaw's probation was that he not violate any laws punishable by imprisonment, and the positive drug screen was circumstantial evidence that he had been in possession of and had used an illegal controlled substance, marijuana, which was a violation of the law punishable by imprisonment. The trial court did not specify on what basis it was revoking Shaw's probation, but the fact that appellant had tested positive for marijuana was sufficient to support the revocation even though it was not one of the bases alleged by the State for revocation. There was testimony about Shaw's positive drug screen at the revocation hearing, and Shaw made no objection to that evidence. Shaw is precluded from arguing on appeal that he was not given notice of a condition of probation that he had allegedly violated because he failed to object to it at trial. See *Cheshire v. State*,

80 Ark. App. 327, 95 S.W.3d 820 (2003). Because the State need only prove one basis for revocation, it is not necessary to discuss Shaw's other two arguments.

Affirmed.

ROBBINS and HEFFLEY, JJ., agree.